expiry of the agreement of a right which has accrued during the currency of the agreement. It is obvious that where a right has accrued and a claim is payable during the currency of the agreement, such a claim cannot be disbarred merely because the agreement has expired or been terminated. In the present case, if the right to the 1984 annual increment could be shown to have accrued during the currency of the 1982 agreement, the application for non-compliance would certainly be valid even if the claim itself was made after its expiry.

Under s 14(2)(b) of the Industrial Relations Act, the period of a collective agreement shall not be less than three years from the date of commencement of the agreement. Thus, under art 30(a) of the 1982 agreement which took effect from 1 March 1981 to 29 February 1984, the requisite three calendar months' notice 'shall not be given before 1 December 1983'. This is to comply with the provisions of s 14(2)(b) of the Industrial Relations Act and to ensure that the agreement would continue for a minimum period of three years from the date of its commencement, and since the three-year period would be completed on 29 February 1984, the three calendar months' notice of termination could not be given before 1 December 1983. Under s 3 of the Interpretation Act 1967, 'month' means a month reckoned according to the Georgian calendar. Whereas a 'calendar month' is a legal and technical term; and in computing time by calendar months, the time must be reckoned by looking at the calendar and not by counting days (see *Stroud's Judicial Dictionary*). Accordingly, since notice of termination was given on 15 December 1983, a three calendar month notice would, if at all, terminate the agreement on 15 March 1984, and the purported acceptance by the company of the termination of the agreement on 29 February 1984 was therefore entirely misconceived and invalid. But the crucial issue here is whether the union's registered letter of 15 December 1983 can constitute a valid three calendar month notice as stipulated in art 30(a) of the 1982 agreement? We do not think that it is a valid notice. In the first place, the notice was given under art 20 and not art 30 of the 1982 agreement. Secondly, even if the letter was accepted as a notice of termination under art 30(a), it was a notice intended to terminate the agreement on 29 February 1984. For termination on that date, the notice ought to be given on 1 December 1983 for the purpose of compliance with the requisite 'three calendar months' notice'. The notice, therefore, did not comply with the provisions of art 30(a), and since the result would be detrimental to the workers, the defect could not be cured or waived by the company's acceptance of it. In the absence of any provision to the contrary, the 1982 agreement 'shall continue to be in force' after 29 February 1984 although the agreement by that date had already been in force for three years – the minimum period required by s 14(2)(b) of the Industrial Relations Act. Further, for the purpose of entering into a fresh negotiation, the terms of the 1982 agreement (unlike other collective agreements that have come before us) did not require the termination of the agreement as a condition precedent. Accordingly, the correct legal position is that the 1982 agreement had not been lawfully terminated and the terms of the agreement would continue to be in force until superseded by the new terms of the Industrial Court award no 63 of 1985 (ie the first award) which by art 2 of the first schedule 'shall be deemed to have come into effect on 1 June 1984'. The annual increment accruing to the employees on 1 March 1984 under art 32(b) must therefore be paid.

As referred to earlier, even if the union's registered letter of 15 December 1983 were deemed to be a proper three calendar month notice of termination under art 30(a), the termination would only take effect on 15 March 1984. As such, the 1984 annual increment which was due to the confirmed employees on 1 March 1984 would still be payable as it had accrued during the currency of the 1982 agreement.

In the circumstances, we rule that the Industrial Court did not act without or in excess of jurisdiction when it ordered the company by the award no 143 of 1986 to pay the 1984 increment due to the confirmed employees under the 1982 agreement before their salaries were converted to salary scales under award no 63 of 1985.

The appeal is accordingly dismissed with costs. Deposit to the respondents on account of taxed costs.

*Appeal dismissed.*

Solicitors: *TM Varughese & Co; P Kuppusamy & Co.*

Reported by *Prof Ahmad Ibrahim*

## New Straits Times (M) Bhd & Ors v Mohd Zainal Abidin bin Abdul Mutalib & Anor

SUPREME COURT (KUALA LUMPUR) – SUPREME COURT CIVIL APPEAL NO 356 OF 1988
HASHIM YEOP A SANI, HARUN SCJJ AND GUNN CHIT TUAN J
19 OCTOBER 1988

*Civil Procedure – Injunction – Appeal against refusal to set aside interim injunction – Application to strike out paragraphs in statement of claim – Rules of the High Court 1980, O 18 r 19*

This was an appeal from the refusal of the learned judge to set aside an interim injunction. The interim injunction as varied in effect directed that the appellant and another, each of them, by themselves or their servants or agents or any of them be restrained from describing Pertubuhan Kebangsaan Melayu by any name other than 'UMNO Baru' or 'Pertubuhan Kebangsaan

Melayu Bersatu (Baru)' in any of their publications. The appellants had applied for certain paragraphs in the statement of claim to be struck out on the ground that they disclosed no cause of action or otherwise were an abuse of the process of the court. The learned judge said in his judgment that he would have dismissed the prayer but for his impression that the interim order as varied would be satisfactory to all parties.

**Held,** allowing the appeal:

(1) As the official name of the political party registered is according to the gazette notification 'Pertubuhan Kebangsaan Melayu Bersatu (Baru)' or 'UMNO' it is obvious that the injunction as varied cannot stand.

(2) The application under O 18 r 19 to strike out certain paragraphs in the statement of claim had not been properly disposed of by the learned judge and the application should be heard by another judge.

**Legislation referred to**
Rules of the High Court 1980 O 18 r 19

**Appeal from:** Civil Suit No S6-25-128-88 (High Court, Kuala Lumpur)

*Lim Chor Pee* (*Syed Hamid Albar* with him) for the second appellant.

*Yeoh Poh San* (*Miss Lim Swit Boey* with him) for the respondents.

*Mohamed Zaki bin Azmi* holding watching brief for UMNO.

**Hashim Yeop A Sani SCJ** (delivering the oral judgment of the court): This is an appeal against the refusal of the learned judge to set aside an interim injunction dated 5 August 1988. Mr Yeoh Poh San, counsel for the respondents, conceded that the original interim order granted by the learned judge was too wide. The learned judge, after hearing arguments, varied the order on 1 September 1988. The order as varied in effect directed that the appellant and another, each of them by themselves or their servants or agents or any of them be restrained from describing Pertubuhan Kebangsaan Melayu Bersatu by any name other than 'UMNO Baru' or 'Pertubuhan Kebangsaan Melayu Bersatu (Baru)' in any of their publications.

Looking at the gazette notification 251/88 dated 18 February 1988 it seems clear that the official name of the political party registered is 'Pertubuhan Kebangsaan Melayu Bersatu (Baru)' or 'UMNO'. It is obvious to us that in the face of the gazette notification 251/1988 the injunction as varied cannot stand.

As regards the appellants' application that para 11(14)-11(34) of the statement of claim be struck out on the grounds that they disclose no cause of action or otherwise an abuse of the process of the court, the learned judge has said in his judgment that 'he would have dismissed the prayer' but for his 'impression' that the interim order as varied would be satisfactory to all parties. We are of the view that the application under O 18 has not been properly disposed of.

The appeal is accordingly allowed with costs here and below and the interim injunction set aside. We also direct that the application under O 18 r 19 to strike out certain paragraphs in the statement of claim be heard by another judge.

Deposit to be refunded to the appellant.

*Appeal allowed.*

Solicitors: *Albar Zulkifly & Yap*; *Yeoh Poh San & Co.*

Reported by *Prof Ahmad Ibrahim*

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## Rothmans of Pall Mall (M) Bhd v Neo Kim Har & Anor

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO C125 OF 1984
GUNN CHIT TUAN J
19 SEPTEMBER 1988

*Bailment – Carriage of goods – Consignment stolen whilst in care, custody and control of carriers and their servants – Liability – Insurance taken out by owner of goods – Subrogation – Evidence Act 1950, s 114(g) – Contracts Act 1950, ss 104 & 105*

In this case the defendants had entered into a contract with the plaintiff to carry the tobacco products of the plaintiff to its distributors. On 20 December 1922, the defendants sent their motor vehicle to the premises of the plaintiff to collect a consignment of cigarettes and tobacco for delivery to Malacca and Johore. The driver and an attendant of the said vehicle were at the material time employees of the defendants and the said consignment was stolen whilst under the care, custody and control of the defendants and/or their servants. The plaintiff had insured the goods and had been paid by the insurers, who then sued the defendants for the loss suffered.

**Held,** granting the application:

(1) Where as in this case there is a bailor and bailee relationship, the bailee is under a duty to take all reasonable precautions to protect the goods from theft and if the bailee entrusts that duty to his servants or agents he is answerable for the manner in which those servants or agents carry out their duty. If the servants or agents steal the goods or make away with them the bailee, as master, is liable.

(2) The onus was on the bailee to prove that the loss of the goods bailed was not caused by any fault of his or any of his servants or agents to whom he entrusted the goods for safe keeping. In this case the defendants have not shown how the goods were stolen and have failed to discharge the onus, which was upon them, of proving that what happened was not the result of their negligence or the negligence and/or misconduct of their servants. In fact the defendants were negligent in having employed a driver without having taken reasonable care to make sufficient inquiries to check his character with regard to honesty and trustworthiness.

(3) The insurance policy taken out by the plaintiff did not cover the liability of the defendants who must pay for the value of the goods if it had been delivered to them as per the delivery